



CLOSED CASE SUMMARY

ISSUED DATE: APRIL 20, 2021

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2019OPA-0888

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy	Not Sustained (Inconclusive)
# 2	5.001 – Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Inconclusive)
# 3	5.001 – Standards and Duties 11. Employees Shall Be Truthful and Complete in All Communications	Not Sustained (Unfounded)

This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections are written in the first person.

EXECUTIVE SUMMARY:

The Complainant alleged that he was subjected to biased policing when he was arrested because of his race.

SUMMARY OF INVESTIGATION:

OPA was notified of an allegation that an SPD employee – Named Employee #1 (NE#1) – may have engaged in criminal activity when she brandished a firearm at her wife. As the incident occurred in Anacortes, OPA referred it to the Anacortes Police Department (APD) for investigation. The APD investigation determined that the allegations of criminal activity were made by NE#1’s wife – who is referred to here as the Subject. The Subject purportedly told her employer that she had to kick NE#1 out of their shared home because NE#1, who would allegedly consume alcohol and grow angry, pointed a firearm at her on two occasions. These statements were allegedly made by the Subject during a performance review conducted of her by a supervisor. Her employment, which had been probationary, was subsequently terminated.

APD interviewed both the Complainant and NE#1 as part of the criminal investigation. During her interview, the Complainant acknowledged that her relationship with NE#1 had some ongoing issues but denied that she ever reported domestic abuse or the pointing of a firearm to her supervisors. She opined that the attribution of these statements to her by the supervisors may have been retaliatory given her filing of complaints against the employer after her termination. The Complainant told APD that both she and NE#1 kept their firearms secured in the home.

NE#1 also denied that she had ever engaged in domestic abuse towards the Complainant and further denied ever pointing her firearm at the Complainant. NE#1 said her only firearm was kept at the precinct. APD contacted the precinct and it was verified that the firearm was there.



APD noted that, in addition to the accounts provided by the supervisors, a Deputy Chief at the employer generated a memorandum in which he contended that the Subject confirmed reporting that NE#1 pointed a firearm at her twice.

Ultimately, after weighing all the evidence, APD found an insufficient basis to seek criminal charges and closed its investigation. The matter was returned to OPA.

As part of its administrative investigation, OPA interviewed both the Subject and NE#1 (twice). They provided similar statements to those secured by APD during the criminal investigation. Both continued to deny that any criminal conduct occurred, including affirming that NE#1 did not point a firearm at the Subject at any time. Both verified that NE#1 moved out of the home for around a week and then came back.

OPA questioned NE#1 about where her firearm was located at the time of the incident. At her first OPA interview NE#1 said that at the time she kept her firearm in the garage or in her car. She confirmed that the Subject did not like guns being in the home, so she kept it in these places. When asked whether she ever stored her firearm in the home, NE#1 responded: "No, I...I have never had my gun out in the house." She said that she currently left her firearm at the precinct and that she had started during so several months prior to being interviewed by APD.

During her second interview, NE#1 stated that, when she first moved into her home with the Subject, she kept the firearm in her dresser. She said that she stopped doing this after a short period of time because it was not safe storage. OPA questioned her concerning her statement at her first interview that the firearm was not stored in the house. She clarified that the garage was technically within the house and she that she misunderstood the question she had been asked. NE#1 was lastly asked why she did not tell APD that she brought her firearm home at the time. NE#1 said that it was not a question that was directly posed to her but denied withholding information from APD.

OPA further interviewed the Subject's former partner, who shared custody of their child in common. The former partner denied knowledge of any domestic abuse by NE#1 and said that she felt safe having her child stay with them.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy

SPD Policy 5.001-POL-2 requires that employees adhere to laws, City policy, and Department policy.

The main evidence supporting the finding that NE#1 brandished a firearm at the Subject is the purported statement to this end made by the Subject to her supervisors. However, the Subject now denies ever saying this and alleges that this has been attributed to her by the supervisors due to complaints she has filed against her former employer. She also contends that it is suspicious that her comment about a criminal act was made to a law enforcement agency in November, but that the agency would not take action on it until December. NE#1, like the Subject, denies engaging in these actions.

In assessing this allegation, OPA believes that it clearly cannot meet its burden of proof to establish criminality on NE#1's part. This is predominantly due to the Subject's recanting of the past statements attributed to her.



Moreover, this is the case even though OPA does not agree that the Subject has established any real motive for her employer to have fabricated her statements. The information adduced during the APD criminal investigation indicated that the employer had amassed significant evidence and witnesses supporting their termination decision and it is not clear to OPA why creating a domestic abuse allegation against NE#1 would have been necessary. However, the evidentiary contradictions prevent OPA from reaching a determinative finding on this allegation.

Accordingly, OPA recommends that this allegation be Not Sustained – Inconclusive.

Recommended Finding: **Not Sustained (Inconclusive)**

Named Employee #1 - Allegation #2

5.001 – Standards and Duties 10. Employees Shall Strive to be Professional

SPD Policy 5.001-POL-10 requires that SPD employees “strive to be professional at all times.” The policy further instructs that “employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers.” (SPD Policy 5.001-POL-10.)

This allegation is premised on the same conduct discussed in the context of Allegation #1. Given that OPA deems Allegation #1 to be inconclusive, the same finding is reached here.

Accordingly, OPA recommends that this allegation be Not Sustained – Inconclusive.

Recommended Finding: **Not Sustained (Inconclusive)**

Named Employee #1 - Allegation #3

5.001 – Standards and Duties 11. Employees Shall Be Truthful and Complete in All Communications

SPD Policy 5.001-POL-11 requires Department employees to be truthful and complete in all communications. This allegation was investigated based on the possibility that NE#1 was dishonest when describing where she kept her firearm to both APD and OPA.

First, OPA does not believe that NE#1 was dishonest in her communications with APD. During her interview, she was not asked where she kept her firearm at the time of the incident. Moreover, it was true that, at the time of the interview, she stored her firearm in her work locker.

Second, while NE#1’s answers between her two OPA interviews may have been inconsistent, they were not untruthful. NE#1 explained that when she said that she kept her firearm in the home, she was including her garage as part of the home. OPA cannot say that this was dishonest. In addition, NE#1 said that, when asked by OPA whether she ever took her firearm out within the home, she did not think that OPA was asking her whether she ever stored it in the home. She said that this was a misunderstanding of what she was being asked, not dishonesty. OPA credits her responses.

Accordingly, OPA recommends that this allegation be Not Sustained – Unfounded.



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Recommended Finding: **Not Sustained (Unfounded)**